

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13787, of Francois R. LePelch, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7107.2 to change a non-conforming use from beauty salon, first floor, to general offices for a non-profit organization, first floor, in an R-4 District at the premises 901 East Capitol Street, S. E., (Square 942, Lot 58).

HEARING DATE: July 14, 1982

DECISION DATE: August 4 and September 1, 1982

FINDINGS OF FACT:

1. The application appeared on the preliminary calendar for the Public Hearing of July 14, 1982. The affidavit of posting evidenced that the subject property was posted seven days prior to the Public Hearing instead of ten days as required under the Supplemental Rules of Practice and Procedure before the BZA. The applicant testified that the affidavit of posting reflected that both the posting date and the date the affidavit was filed bore the same date and that this was in error. The property, in fact, was posted on July 1, 1982. The Chair determined that proper notice had been given and ruled that the case would go forward on the merits.

2. The subject site is located at the southeast corner of the intersection of 9th and East Capitol Streets and is known as premises 901 East Capitol Street, S. E. It is in an R-4 District.

3. The subject site is improved with a two story structure. The first floor was used as a beauty salon pursuant to Certificate of Occupancy No. 55250, dated April 5, 1966. The second floor is used as a general office for a non-profit organization, the Latin American Manufacturer's Association hereinafter referred to as LAMA, pursuant to Certificate of Occupancy No. B12936, dated March 29, 1982. The first floor is now vacant. The LAMA used the first floor for storage purposes without a certificate of occupancy.

4. The contract purchasers of the subject site seek the special exception relief in order for the lessee, LAMA, to extend its operations to include the use of first floor.

5. The site is located in the eastern section of the Capital Hill Historic District. The area is characterized by row structures used as single family dwellings and flats. Also, there are some small apartment buildings in the area. The southwest corner of 9th and East Capitol Streets is occupied by a two-story structure with a beauty parlor on the ground floor and a dwelling unit on the second floor. The northwest corner of 9th and East Capitol Streets is occupied by a bank. The subject site is in an R-4 District that encompasses nearly all this part of the Capital Hill Historic District. The nearest commercial zone is a C-2 District about 1100 feet to the east.

6. Offices for a non-profit organization are first permitted in an SP District. A beauty salon is first permitted in a C-1 District. An SP District use is more restrictive than a C-1 District use.

7. The LAMA is a non-profit trade association representing Hispanic and other minority manufacturing and technical firms located in the United States. Its purpose is to enhance the participation of minority owned firms in the domestic economy. It does not represent Latin American firms in Latin America. The LAMA is funded by a membership dues and donations from major corporations, as well as grants from the U.S. Government. It is currently operating under a grant from the U.S. Department of Commerce.

8. The LAMA has been operating at the present site since February, 1982. It now has four full-time and one part-time employee. The LAMA anticipates that if the requested relief is granted it will have at least six full time employees. The maximum number of employees would not exceed ten. The LAMA operates from 8:30 A.M. to 5:00 P.M., Monday through Friday.

9. The LAMA's membership is scattered throughout the U.S. There are fifteen board members who meet once a year. The last board meeting was held in the subject first floor premises. Few of LAMA's clients come to the subject second floor office. Normally LAMA's employees travel to different parts of the U. S. and meet with their clients. If a client comes to Washington, the client is usually met at the office of the concerned business agency.

10. The subject site provides parking for four vehicles on a lot directly south of the subject site and located on 9th Street. The parking lot is owned by the applicant. There are two curb cuts on 9th Street which provide entrance and exit for the vehicles. There is a private alley to the east of the parking site.

11. Two of the four parking spaces are reserved for LAMA employees and two are reserved for other users such as

guests and clients. Of the current four employees two live on Capitol Hill and walk to work, one arrives by carpool and one drives to work. The LAMA has made no provisions for leasing parking spaces for any prospective employees whether it be two in the immediate future or six if the maximum number of employers is reached. The LAMA would advise any future employees that they must make their own arrangements for parking.

12. The immediate area surrounding the site is under the Residential Parking Permit Program. A non-resident cannot park for more than two hours on the street.

13. The beauty salon on the first floor had been operating for sixteen years. Until three years ago there were approximately thirty clients a day, half of whom came from the neighborhood. In the last three years, the owner was the sole beauty operator because of a diminished business and health reasons and had no more than six clients per day.

14. The Office of Planning and Development by report dated July 9, 1982, recommended that the application be denied. It reported that the area surrounding the proposed office use is residential with only two exceptions, another beauty salon and a bank, both opposite the subject site. The OPD was of the opinion that further office use would have an adverse affect in this predominantly residential area and that the noise and vehicular traffic generated from the proposed use will have an adverse impact on the area. In summary, the OPD was of the opinion that the proposed use is not a neighborhood facility and such a use would be objectionable. As such, the application does not meet the tests of Sub-section 8207.2 and Sections 7104 and 7109 of the Zoning Regulations. The Board concurs in the findings of the OPD and its recommendation.

15. The Capitol Hill Restoration Society, Inc., by letter dated July 14, 1982, reported that the Zoning Committee of the Society, acting for the membership during the summer recess and for the Board of Directors between its meetings, voted unanimously to oppose this application. The Committee found that an office for a non-profit corporation is not a neighborhood facility and that it is an objectionable use of property in an R-4 District. Such a use in no way relates to the life of the neighborhood or even of the larger community. It has a deadening effect on the neighborhood in that the property is dark and lifeless evenings and weekends. It will attract automobiles of employees which may occupy on-street spaces for extended periods, if not the entire workday, residential permit parking notwithstanding. The CHRS further reported that the objectionable nature of the proposed use is attested to by a petition in opposition, filed with the Board, signed by

forty-one neighboring residents, most of whom are owner-occupants, who maintain that the residential character of their neighborhood would be adversely affected and that in no way did the proposed use use serve the community. The Board so finds.

16. Three home owners in the immediate neighborhood of the site appeared at the public hearing in opposition to the application. They argued that the present four parking spaces are inadequate for the anticipated growth in the number of employees. A lack of on-site spaces would result in the neighboring streets being used by strangers and that the existence of the residential parking program permits evidences the shortage of parking on the neighboring streets. The opposition further argued that the proposed use is a more intense use of the premises than has existed at the site in the last three years. The Board so finds.

17. One owner of property immediately adjacent to the site appeared at the public hearing in favor of the application. In his opinion, the LAMA operation was of a low key nature and had no adverse affect on the use of his property. He testified that he had never seen more than four cars parked on the lot and that at times the lot was vacant. Upon cross-examination the witness testified that he worked all day away from the site and viewed the site only on his lunch hour.

18. Advisory Neighborhood Commission 6B made no recommendations on the application.

19. The applicant on August 13, 1982 filed a Motion for a further hearing. At the Public Meeting of September 1, 1982, the Board DENIED the Motion. The Board found that no new issues were raised in the Motion and no evidence would be introduced that the Board had not entertained at the Public Hearing of July 14, 1982.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Sub-sections 7104.2 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Sub-section 7104.2 of the Zoning Regulations provides that:

"If approved by the Board of Zoning Adjustment in accordance with the authority and procedures established in Section 7109 of this article a Class II

non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted."

Section 7109 requires findings that, in summary, the proposed use will be a neighborhood facility or if not a neighborhood facility it will not be objectionable.

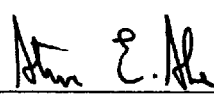
The Board concludes that the proposed use is permitted in the most restrictive district in which the existing non-conforming use is permitted. The Board further concludes that the proposed use is not a neighborhood facility. The clients of LAMA are scattered throughout the United States of America. The LAMA offers no services to its immediate neighborhood. The Board, in addressing the issue of whether the proposed use is objectionable, is of the opinion that the proposed use is less intense than when the beauty salon operated with thirty clients a day but more intense than the operation of the beauty salon in the last three years. The Board notes the dearth of the evidence adduced by the applicant as to the minimal amounts of noise, traffic or other deleterious external effects which the proposed use can reasonably be anticipated to generate or create. As to this, the Board concludes that the applicant has not met its burden of proof. The Board is further of the opinion that the proposed use is of a nature which is out of harmony with a predominately residential neighborhood ambience. The Board further does not consider lightly the alleged use of the first floor for storage and meetings by the applicant. It orders the applicant to cease such use. Accordingly, for all these reasons, it is ORDERED that the application is DENIED.

VOTE On the Application: 3-2 (Connie Fortune, Lindsley Williams and Charles R. Norris to deny, William F. McIntosh and Douglas J. Patton opposed).

VOTE On the Motion for Further Hearing: 3-2 (Connie Fortune and Charles R. Norris to deny, Douglas J. Patton to deny by proxy, Lindsley Williams opposed, William F. McIntosh opposed by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

FEB - 4 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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